



## **Portland District Lenders' Update**

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**TO PROVIDE QUALITY RESOURCES THAT MAKE A DIFFERENCE FOR SMALL BUSINESS**

From time to time, we publish the Lenders' Update: information that we hope will help you have a most successful SBA partnership. If there are any issues you would like to see addressed in this publication, please contact Joe Martinez, Chief, Finance Division at (503) 326-5214.

### ***Preserving the Guaranty***

After weeks of gathering information, making a credit decision and dealing with both bank and SBA procedures, you succeed in receiving a loan guaranty from SBA. So, is this the end of the process?

All paid guaranty loans are "good loans" and how you get there generally involves sound closing, documentation and servicing procedures.

In the SBA system the primary document is the Loan Authorization, which is a contract between the lender and SBA. A lack of attention to the requirements of the Loan Authorization can result in a loss and have a negative impact on percentage of the SBA guaranty and perhaps result in a loss of the guaranty. **Following are some Loan Authorization tips that will help ensure the preservation of the SBA guaranty for the term of the loan:**

**The Note** Always use SBA Note form #147. The only exceptions involve Cap-line sub-notes and the Express loan program, where the lender can use its own legally enforceable note.

**The Guaranty Fee** The fee must be paid prior to the first disbursement or within 90 days of the approval date, whichever date is earlier. For loans with maturities of less than 12 months and for loan increases, the fee must be paid at the time of the loan application or the request for increase.

**Use of Loan Proceeds** Always document the use of proceeds by paying the vendor directly. When the borrower presents a paid invoice for reimbursement, require the cancelled check or call and confirm payment. Never disburse the loan funds into the borrower's checking account (other than working capital) and allow the borrower to "self-certify" the use of the loan proceeds.

**Collateral** Ensure that the collateral required by the Loan Authorization is obtained and the lien position verified. Verify that the collateral to be purchased with loan proceeds was actually purchased and delivered to the borrower's business. Verification might consist of documentation provided by the vendor showing delivery and payment.

**Equity Injection** Confirm and acquire evidence of the injection prior to the first disbursement.

**IRS Tax Return Verification** Confirm financial information submitted with the loan application using IRS Form 4506 and the reports received from the IRS.

**Change of Ownership** Verify the seller's financial information using IRS Form 4506.

**Verify Prior to First Disbursement** Paying close attention to all paragraphs in the Loan Authorization requiring verification before first disbursement is of paramount importance. Ensure that the verification is complete and that evidence of borrower compliance is retained in the loan file.

In summary, your attention to these crucial issues will help make our SBA partnership a success.

### ***Automatic Cancellation of Loans When the Guaranty Fee Remains Unpaid***

The Portland District Office wants to help you reduce the number of loan guaranty cancellations that have resulted from the implementation of SBA's Automated Guaranty Notice and Cancellation System.

The SBA Loan Guaranty on loans with an original maturity in excess of 12 months is subject to cancellation if the guaranty fee is not received by SBA by the 90th day after loan approval. As a courtesy to lenders, for any loan on which the guaranty fee is not timely paid, SBA provides a second notice entitled "Notice of Overdue Guaranty Fee" to the lender. This alerts the lender that the fee is delinquent. This notice is sent to the lender on or after the 91st day after loan approval. If the guaranty fee remains unpaid on the 121st day after loan approval, then SBA will send to the lender a "Cancellation of Loan Guaranty" notice. Concurrent with this notice, the SBA guaranty will be automatically cancelled.

Attention to the 90 day rule and the "Notice of Overdue Guaranty Fee" will avoid the cancellation. If the loan guaranty is cancelled, reinstatement is possible, but requires additional effort on the part of the lender and the SBA. The lender must request the reinstatement in writing and certify that there

has been no adverse change and the lender has no knowledge that an adverse change is imminent. If there has been an adverse change, the SBA cannot reinstate the guaranty! A check for the guaranty fee must accompany the request. Please avoid cancellation and pay the fee within 90 days of loan approval!

### ***Authorization Drafting Tip: Eligible Passive Company Loans with Equipment***

When an Eligible Passive Company is the SBA borrower, the Operating Company has been advised for tax purposes to have a separate party hold the real estate. Usually, if the EPC is the borrower, then the Operating Company is the guarantor. However, if equipment is a component of the loan, close scrutiny is needed. Equipment is usually owned by the Operating Company, not the EPC. If that is the case, then under SBA rules, the Operating Company must be a co-borrower. **More importantly, the Operating Company must sign the security agreement and financing statement, or you will not have a lien on the equipment.** Be sure to double check your EPC loans for this issue and keep equipment ownership documentation in the loan file.

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